

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA (RENO)

TESLA, INC,	)	CASE NO: 3:18-CV-00296-LRH-CBC
	)	
Plaintiff,	)	CIVIL
	)	
vs.	)	Reno, Nevada
	)	
MARTIN TRIPP,	)	Monday, May 13, 2019
	)	
Defendant.	)	(10:58 a.m. to 11:11 a.m.)

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TELEPHONIC CASE MANAGEMENT CONFERENCE

BEFORE THE HONORABLE CARLA BALDWIN CARRY  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: ALLISON L. LIBEU, ESQ.  
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Transcribed by: Exceptional Reporting Services, Inc.  
P.O. Box 8365  
Corpus Christi, TX 78468  
361 949-2988

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1                   Reno, Nevada; Monday, May 13, 2019; 10:58 a.m.

2                   (Call to Order)

3                   (Telephonic conference)

4                   **THE CLERK:** United States District Court for the  
5 District of Nevada is now in session, the Honorable Carla  
6 Baldwin Carry presiding. This is the date set for a telephonic  
7 case management conference in Case Number 18-CV-0296-LRH-CBC,  
8 *Tesla, Inc. versus Martin Tripp*.

9                   Present telephonically on behalf of Plaintiff,  
10 Allison Libeu. Present telephonically on behalf of Defendant,  
11 William Fischbach, III.

12                  **THE COURT:** Good morning, everyone. First, I want to  
13 thank you all and apologize for not being able to be here last  
14 Monday. I was in another hearing and it was going late. So I  
15 appreciate everybody's ability to reschedule this and, again,  
16 my apologies for that.

17                  I was actually initially going to just vacate this  
18 hearing but it looks like both parties are amenable to setting  
19 a settlement conference. So that was really the reason I  
20 wanted to speak with everybody. I'll start with you,  
21 Ms. Libeu. Is that the position of the parties or at least  
22 from your client's perspective at this time?

23                  **MS. LIBEU:** Yes, it is, your Honor. We'd be happy to  
24 have either a settlement conference with the Court or I know  
25 Mr. Fischbach expressed that he might prefer private mediation.

1 We'd be amenable to either.

2 **THE COURT:** Okay. Mr. Fischbach, I'm going to turn  
3 to you, sir. What are your thoughts?

4 **MR. FISCHBACH:** Judge, I think, you know, that is  
5 accurate. I think one of the other reasons we wanted a status  
6 conference today is to just get the Court abreast on where we  
7 are with discovery which is we're actually doing very well.

8 **THE COURT:** It looked like it. I was very impressed.

9 **MR. FISCHBACH:** We're moving forward with depositions  
10 and the only kind of, you know, fly in the ointment is the  
11 issue of the deposition of Elon Musk. And per the Court's  
12 order, we were to do some discovery and then meet and confer.  
13 From our perspective, we will complete -- we think we have a  
14 sufficient basis to depose Mr. Musk right now.

15 We are going to do a 30(b)(6) deposition on one  
16 person familiar with the Gigafactory shooting issue but other  
17 than that, I think we're where we need to be in terms of  
18 identifying some just limited areas to depose Mr. Musk on.

19 But we are also bumping up against the edge of the  
20 discovery deadline. I think it's the first or second week of  
21 July and I've discussed this issue with Tesla's counsel and I  
22 think the solution we'd like to propose, subject to the Court's  
23 blessing, of course, is that -- I think we're going to be able  
24 to complete all discovery by that deadline with potentially the  
25 exception of the deposition of Elon Musk.

1           And I don't see Tesla agreeing to that and I  
2 understand their position and I suspect it's eventually  
3 something that's going to have to be debriefed to the Court.  
4 So a big concern is we don't want to potentially lose out on  
5 deposing him because of that deadline. So my conversations  
6 with Tesla's counsel, we, I think, just want maybe -- to the  
7 extent we can't -- to the extent the Court approves Mr. Musk's  
8 deposition and to the extent we can't kind of squeeze it in by  
9 that discovery deadline that we have the ability to do so after  
10 that deadline.

11           Allison, did you want to add anything to that?

12           **MS. LIBEU:** No. And I just want to make clear for  
13 the record that if -- we obviously oppose Mr. Musk's deposition  
14 but understand that the Court would be likely weighing in on  
15 that issue and should the Court order Mr. Musk's deposition, I  
16 represented to Mr. Fischbach that we will take the position  
17 that if for some reason we can't schedule it before the cutoff,  
18 then they lose out on the depo.

19           **THE COURT:** Okay. And I'm amenable to that, too. I  
20 think -- I mean, I have to be. I'm assuming -- I think I said  
21 this in the past hearings but I want to say it again. I truly  
22 appreciate how well the parties are working together and how  
23 diligent everybody has been with getting discovery done in this  
24 case. Oftentimes in cases this size and the scope can be quite  
25 contentious and we have lots of problems. And so I've been

1 very impressed with everyone and I really appreciate it.

2           So I have no problem with that. I don't know if  
3 there -- if we necessarily need to do anything at this point  
4 from -- by way of an order or stipulation but I will put it on  
5 the record that the Court will be amenable to allowing for  
6 Mr. Musk's deposition should it be ordered to be taken after  
7 that discovery deadline if it does pass.

8           One question I do have for the parties though -- I  
9 know that there's a dispute between the parties about taking  
10 Mr. Musk's deposition. But has there been any discussion about  
11 even a limited deposition where the parties can agree on just  
12 the scope and the time and things of that nature? Is  
13 everything still in dispute? And I'll start with you,  
14 Mr. Fischbach.

15           **MR. FISCHBACH:** We have had some discussion to that  
16 extent, Judge. I can represent to the Court right now, we're  
17 not -- in terms of the areas of Mr. Musk's deposition, it's  
18 almost exclusively going to be the issues raised in our  
19 counterclaim because as you know, he -- some of the statements  
20 were the subject of the defamation claim that (indisc.) and  
21 were made by Elon Musk.

22           We're not interested in getting Mr. Musk to weigh in  
23 on whether the AR622 contained in their trade secrets or  
24 anything like that and that's just not something that -- I  
25 don't even know that he was involved with that. I do think he

1 did have some involvement in the investigation of Mr. Tripp and  
2 we think that might have kind of motivated Tesla's lawsuit and  
3 I think that's a fair issue to -- for us to go into in a  
4 deposition.

5 But as the Court, you know, warned us -- and I agree  
6 -- we're not looking to do a sky's-the-limit-everything's-on-  
7 the-table deposition of Elon Musk. We can identify some very  
8 finite areas to explore.

9 **THE COURT:** Okay. And Ms. Libeu?

10 **MS. LIBEU:** We have had some what I would call  
11 (indisc.) sessions with Mr. Fischbach and are inconsistent with  
12 what he's relayed. What we would like to do and what we've  
13 conveyed to Ms. Fischbach is we'd like to have a more detailed  
14 discussion after the 30(b)(6) that he mentioned earlier and it  
15 covers one of the topics and I understand they want to ask  
16 questions of Mr. Musk and we can have a productive, hopefully,  
17 conversation after that deposition which is scheduled for June  
18 6th, I believe.

19 And then to the extent that we need briefing, which I  
20 expect we probably will, then we can discuss, you know,  
21 agreeing on maybe a schedule subject to, again, your Honor's  
22 blessing on what that would like after we've had that meet-and-  
23 confer after the deadline.

24 **THE COURT:** Okay. Well, that sounds perfect to me.  
25 I guess the question becomes, if the parties are amenable to --

1 and I guess it goes back to my first question is, would the  
2 parties prefer to schedule a settlement conference with the  
3 Court at this time or would you prefer to schedule a private  
4 mediation?

5           Given that we are towards the end of discovery and  
6 the only real issue that I hear the parties having any dispute  
7 over is really the deposition issue with Mr. Musk that has not  
8 necessarily been fully briefed but certainly the Court's  
9 already fully aware of the issue and we've already had some of  
10 this briefing to the extent that it was included in our status  
11 conference reports.

12           I'm actually inclined to do the settlement myself but  
13 let me start with you, Ms. Libeu. What are your thoughts with  
14 scheduling a Court settlement or would you prefer to wait on  
15 that at this time?

16           **MS. LIBEU:** Our perspective, I think, is we're open  
17 to scheduling that as soon as the Court is available and then  
18 we're also open to doing, in addition, a private mediation if  
19 Mr. Fischbach wants to. I know Mr. Fischbach may have  
20 different ideas on timing but we're always open to have some of  
21 those settlement discussions earlier rather than later on our  
22 end.

23           **THE COURT:** Okay. Well, let me ask you,  
24 Mr. Fischbach. What's your preference, sir?

25           **MR. FISCHBACH:** You know, my personal preference,

1 Judge, is I typically like a private mediator but I, candidly,  
2 have not had the opportunity to discuss that either with my  
3 co-counsel or my client. I don't want the Court to -- I don't  
4 want to burden the Court with a settlement conference on her  
5 calendar that might not come to fruition.

6 In terms of timing, my thought is a settlement  
7 conference would be before the Court or a private mediator  
8 probably ideal after that discovery window closes but setting  
9 aside the deposition of Mr. Musk because then for the most  
10 part, all the pieces will be on the chess board in terms of the  
11 facts and, you know, what witnesses are going to say.

12 So I probably -- in terms of timing, probably looking  
13 at some time in kind of a mid-July timeframe is what I was  
14 thinking.

15 **THE COURT:** Okay. Well, this is what my inclination  
16 is, is to go ahead and set up a second -- another status  
17 conference, just one last one, I think, before the close of  
18 discovery. Let's do it maybe two weeks after you do your  
19 30(b)(6) depo which is set for what, the first week of June?  
20 Is that what I heard, around the 5th or the 6th?

21 **MS. LIBEU:** Yes, that's right.

22 **MR. FISCHBACH:** That's correct, your Honor.

23 **THE COURT:** So let's do that. Let's set it for a  
24 couple weeks out and then at that conference, we can --  
25 hopefully by then -- and I will ask the parties to definitely



1 meet and confer with respect to Mr. Musk's deposition prior to  
2 that and if you don't have an agreement, then what we'll do at  
3 that status conference, we'll do two things. We'll set the  
4 briefing schedule on that issue. We'll enter any orders that  
5 we need to with respect to scheduling or at least pushing out  
6 the discovery deadline as it relates to that for that purpose.

7 But then at that point, I would also ask the parties  
8 to meet and confer prior to that hearing to determine whether  
9 or not you want to first conform with the mediation as opposed  
10 to coming in for a settlement conference.

11 And we can discuss all three of those items when we  
12 get to that next settlement -- or status conference. So I  
13 guess what I'd ask for the status conference reports is simply  
14 an update on the meet-and-confer related to Mr. Musk's  
15 deposition. So actually what I'm going to do is I'm going to  
16 set it out three weeks later because you'll have your status  
17 conference reports due about a week before that. That'll give  
18 you at least a good two weeks to meet and confer.

19 So a status update on the meet-and-confer with  
20 Mr. Musk, a status update on whether or not the parties have  
21 agreed to a private mediation or would prefer the Court to set  
22 a settlement conference. And I will go ahead and handle that  
23 because discovery will, for the most, almost entirely be  
24 concluded except for Mr. Musk's deposition.

25 And then, finally, to the extent that we need to have

1 an extension of the discovery deadlines as it relates to  
2 Mr. Musk's depo, I would ask that the parties put together some  
3 sort of an agreement or at least some idea for the Court as to  
4 a briefing schedule and then a timeframe for when to schedule  
5 his deposition.

6 Does that make sense? Does anybody have any  
7 questions over what I'm asking in that?

8 **MS. LIBEU:** No questions, your Honor.

9 **MR. FISCHBACH:** Yeah, nothing for Mr. Tripp, your  
10 Honor. I think one other thing I just wanted to put on the  
11 record is I think Tesla's counsel in terms of disclosure has  
12 done a great job. I've had no issues with them in terms of  
13 holding things back as far as I can tell. I think they're real  
14 generous with the confidentiality designation but I don't --  
15 there's been no issues there.

16 Having said that, if the Court does permit a  
17 deposition of Elon Musk and if some -- something -- some  
18 bombshell pops out of that deposition that we never saw before,  
19 I would like to at least approach the Court and for good cause  
20 potentially to seek to reopen discovery on those limited issues  
21 but only, of course, for good cause.

22 **THE COURT:** Well, and --

23 **MR. FISCHBACH:** And I know you can always do that but  
24 I just wanted to put that on the record.

25 **THE COURT:** No, and I appreciate that. And, again,

1 if something completely out of the woodwork comes, I'm sure  
2 that we all will understand that that will be an issue that we  
3 can then address at that timeframe and certainly -- and we can  
4 -- we'll deal with that at that point but I appreciate you  
5 putting that on the record.

6 Ms. Libeu, do you have any questions or concerns that  
7 you'd like to put on the record while we're on the call?

8 **MS. LIBEU:** No, nothing on our end, your Honor.  
9 Thank you very much.

10 **THE COURT:** Okay. So I'm going to ask my court clerk  
11 to give us a date for that settlement -- or the status  
12 conference, the next one.

13 **THE CLERK:** Yes, your Honor. Thursday, June 27th at  
14 9:00 a.m.

15 **THE COURT:** Does that work for you, Ms. Libeu?

16 **MS. LIBEU:** Yes, it does.

17 **THE COURT:** Okay. Mr. Fischbach?

18 **MR. FISCHBACH:** Yes, your Honor.

19 **THE COURT:** Okay, perfect. Let me see. Is there  
20 anything else from Plaintiff's counsel before we get off the  
21 call?

22 **MS. LIBEU:** Nothing, your Honor.

23 **THE COURT:** Okay. And anything else from the  
24 Defense?

25 **MR. FISCHBACH:** Nothing, your Honor.

1           **THE COURT:** Okay. And I really want to apologize for  
2 having to reschedule this hearing but, again, I want to really  
3 state for purposes of the record how much I appreciate how  
4 diligent and cooperative counsel has been. I've genuinely  
5 enjoyed working on this case with all of you. And so we will  
6 be in recess and we'll talk next June. Thanks so much.

7           **(This proceeding ends at 11:11 a.m.)**

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written above a horizontal line.

Signed

October 10, 2019

Dated

*TONI HUDSON, TRANSCRIBER*